

Draft Environmental Assessment

Wall Creek Wildlife Management Area Grazing Lease Renewal

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***Montana Fish,
Wildlife & Parks***

Draft Environmental Assessment MEPA, NEPA, MCA 23-1-110 CHECKLIST

PART I. PROPOSED ACTION DESCRIPTION

1. Proposed state action: Montana Fish, Wildlife and Parks (FWP) propose to renew, with specific modifications (further described in point 7, below), an existing grazing lease at Wall Creek Wildlife Management Area (WCWMA) for 3 years.

2. Agency authority for the proposed action: Montana Fish, Wildlife and Parks is the owner of 7,067 acre WCWMA which was acquired under FWP's authority to acquire property for fish, wildlife and recreation pursuant to 87-1-241, Montana Code Annotated. FWP further has the authority "to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land" pursuant to 87-1-209 (7), MCA. Under FWP's Land Lease-Out Policy, the Department Director is the appropriate level of authority to provide approval for this lease-out renewal.

3. Anticipated Schedule:

The lease shall renew upon execution of the lease renewal which, pending approval of the course of action outlined in this environmental assessment, is anticipated to be in late March 2013, and the lease is proposed to extend through September 2015.

4. Location affected by proposed action (county, range and township):

The portions of WCWMA in the grazing system are in Madison County (Figure 1).
For full legal description of grazing lease lands, see Appendix 1.

FWP owns additional, adjacent WCWMA lands not within this grazing system.

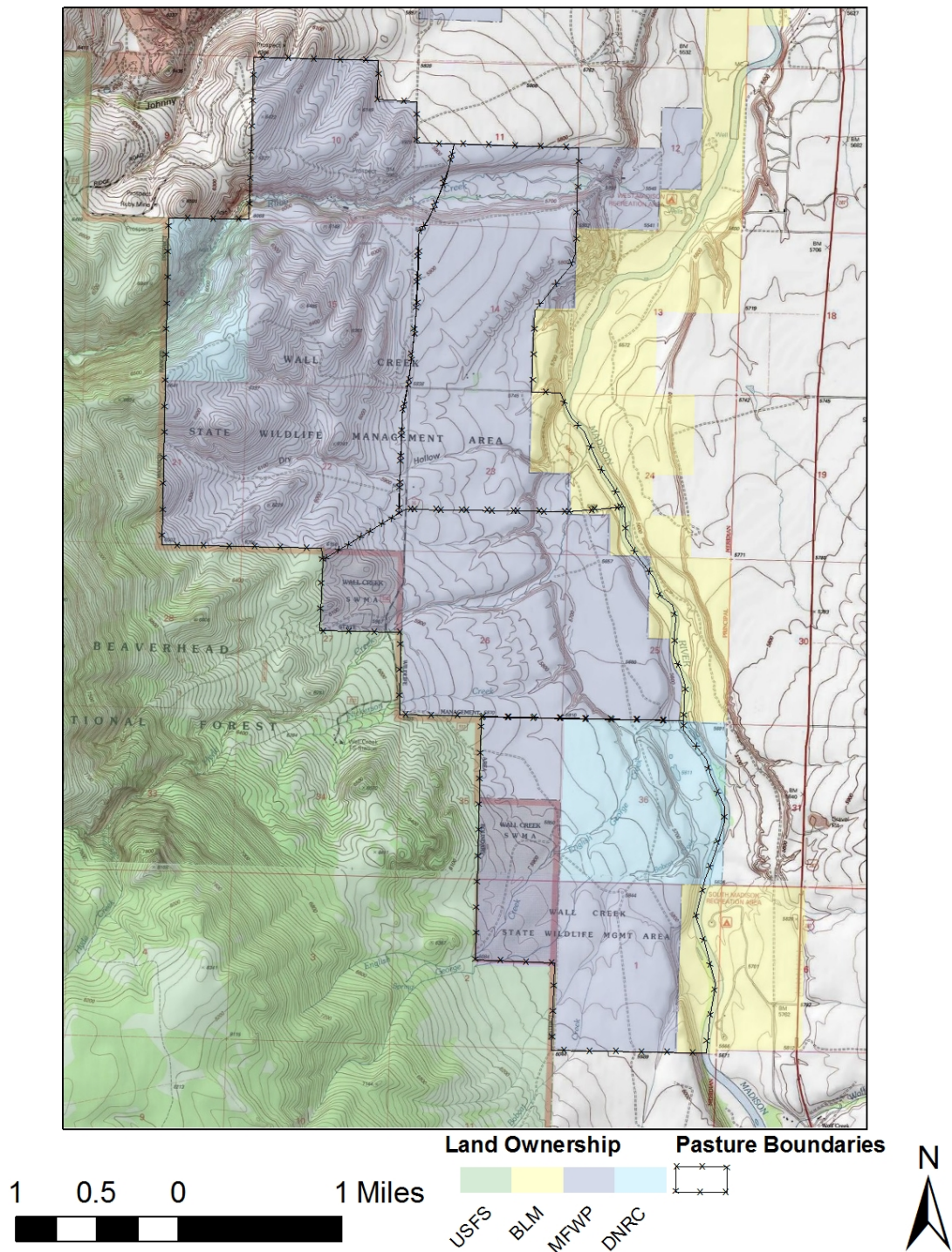


Figure 1: Wall Creek Wildlife Management Area and surrounding lands. Note that all internal fencing, and approximately 2 miles of perimeter fence is now drop-down electric wire to minimize the effects of fencing on animal movement.

5. Project size - WCWMA grazing system occurs on approximately 6,557 acres of rangeland (native grasses, non-native grasses, sagebrush), 300 acres of riparian areas, and 190 acres of woodlands (lodgepole pine and douglas fir are predominant species).

6. Listing of any other Local, State or Federal agency that has overlapping or additional jurisdiction. BLM, DNRC, and USFS are involved in this grazing rotation system.

(a) **Permits:** N/A

(b) **Funding:** The BLM charges the Wall Creek Grazing Association (WCGA) directly for Animal Use Months (AUMs) for use of their lands included in the FWP pastures. This amounts to a nominal fee: \$48 total in 2012. FWP holds the DNRC leases within the bounds of the WMA and directly pays DNRC for the grazing lease scheduled to be \$9.94 per AUM in 2013. FWP charges a standard rate for grazing on the WMA and is allowed by law to charge up to two times the DNRC rate for grazing on the DNRC lease (not to exceed FWP's standard rate). Under the proposed action, WCGA would pay FWP the standard grazing rate which is scheduled to be \$20.50 per AUM in 2013.

(c) **Other Overlapping or Additional Jurisdictional Responsibilities:** FWP, USFS, BLM, and DNRC have been long-term partners with the WCGA through the development and implementation of a cooperative grazing system. FWP provides 4 of the 10 total pastures used in the grazing rotation. The DNRC owns 918 acres inside WCWMA. The BLM owns less than 300 acres, and have been willing partners to change their management to accommodate the system. The USFS owns the remaining 6 pastures of the grazing system, 16,870 acres.

7. Narrative summary of the proposed action or project including the benefits and purpose of the proposed action: To understand the proposed action, it is important to understand the original intent of the grazing lease and how conditions have changed to make alterations to the original plan necessary.

HISTORY: WCWMA was purchased in 1960, and there was no cattle grazing for the next 21 years. By 1982, the original prescriptive needs for the WCWMA grazing lease were as follows:

- "An exchange of forage use intended to mutually benefit all parties involved by the improvement of the condition and palatability of the forage base".
- To allow for a rotational system including rest pastures on the USFS lands behind WCWMA thereby increasing elk forage availability
- To increase control and management of livestock during the occasional early fall snowstorms that could push them out of the hills and down onto WCWMA. With this grazing system, the cows had a designated place to go in fall and consistent rest pastures.
- To form a cooperative agreement with area ranchers to receive in-kind services which were mainly to supervise livestock use and to prevent "undesirable levels of forage utilization" on the USFS or FWP lands
- To enhance desirability of WCWMA for elk to reduce game damage to neighboring lands

The structure of the system allows early-season (May 1 – June 1) grazing on one low-elevation WCWMA pasture. Cows move through one mid-elevation pasture during mid-summer (June 2 – September 22). Mid-elevation pastures are all USFS except for one WCWMA pasture. Cattle return to WCWMA for fall grazing September 23-30. This rotation allows cows to graze on WCWMA in early spring before most of boot-stage (rapid growth phase in range grasses) occurred thereby allowing some regrowth by fall to be available for wintering elk. The fall pasture, used for a short time by livestock, has reduced forage availability for elk. Each year, one pasture is fully rested; this pasture is reserved for elk. This system's history, development, and goals are detailed in Alt et al 1992.

The history of payment or in-kind services is not completely documented. The original 1982 lease describes payment at the federal rate, and in 1993, payment rates were also calculated. The 2000-2005 and 2005-2008, and 2008-2012 leases specify payment of in-kind services, limited to FWP having the authority to determine who may join the Wall Creek Grazing Association and who grazes on the land. FWP has not found written record of in-kind services relative to assistance with fencing or tolerance for elk on private lands.

TODAY: There have been several changes and research projects which have formed the basis for the Proposed Action.

- Management of USFS lands has moved to “range readiness” rotation based on standards and utilization. This has made the grazing system increasingly problematic during spring. The June 1 spring rotation deadline was a compromise made by FWP to make the system work: it is on or after the true phenological onset of boot stage in most years. Thus, FWP treats June 1 as a very hard deadline for cattle to move. The further this move date is delayed, the further into phenological rapid growth the pasture progresses and the less standing forage will be available for elk the following winter. The USFS often finds their lands not ready to receive cows this early, and they ask for FWP to retain them longer on the WMA. FWP is unable to meet this request for the needs of the WMA, resulting in an impasse. For the 3-year term of this proposed lease, the USFS has agreed to continue to host cattle as early as June 1st in each year.
- Elk numbers have increased four-fold, from approximately 500 in the early 1980s to about 2,000 today. Recent research indicates elk and cattle both focus on native grasses, and that we may realize nearly complete utilization of the forage across the WMA even without cattle grazing on the WMA (Frisina, personal communication 2012 and manuscript *in prep*).
- FWP analyzed elk distributions across WCWMA pastures in the context of grazing prescriptions (1988-2007; Shamhart et al 2012). Elk selected for rested pastures over the fall- or spring-grazed pastures which were selected over summer-grazed pastures. Notably, rested pastures are within a grazing system and therefore are different than ungrazed pastures. Elk use of WCWMA increased proportionately with the increases in the herd; thus the grazing system met its original objectives in providing quality forage for elk.
- The WCGA has reduced their involvement from at least 6 different members with approximately 800 cattle to 2 members with about 350 cattle.
- FWP continues to study WCWMA vegetation using transects and exclosures. FWP's plant ecologist reported the vegetative community is “stable if not improving” (Harrington 2011). The context of the site is important to remember: soils are thin, and the area is dry and windblown. The long-term history of the site includes heavy use in the 60-70 years before FWP's purchase of the land. Nonetheless, the grass appears to be in good if not excellent condition.

- FWP has observed a dramatic increase in elk grazing intensity of smooth brome and crested wheatgrass fields since the cattle grazing system was established. They went from essentially non-use to intensive use by elk.

PROPOSED ACTION: We propose to maintain the 3-pasture rest-rotation system, as described above, for the next 3 years (2013-15) with two modifications:

1) Charge the Wall Creek Grazing Association stock members yearly grazing rates. The grazing rate we will charge will be the DNRC rate (\$9.94 per AUM in 2013) in exchange for structural repair and maintenance services by the WCGA on the WMA. For specific services to be rendered, see Appendix C. This charge brings WCWMA in-line with FWP land-lease-out policies and other state WMAs.

2) This will be a 3-year lease, not a 5-year lease as has been previously signed. The shorter term reflects some of the discontent by the USFS partners related to spring grazing as well as concerns from the grazing lessees regarding their own programs. This also provides FWP more opportunity for making adjustments if necessary.

Please see Appendix A for the proposed grazing lease and Appendix C for the specific list of grazing lessee responsibilities.

8. Alternatives:

Alternative A: No Action

Under no action, the lease expires and there would be no grazing on WCWMA. A disadvantage to this alternative would be controlling fall grazing of livestock, especially in the event of early-season snowstorms which have historically moved cattle out of the mountains and onto the WMA.

Alternative B: Proposed Action

FWP allows spring (prior to June 1) and fall grazing on Wall Creek WMA in the same rest-rotation system in cooperation with the USFS, BLM, DNRC, and local ranching partners as has been occurring for the past 30 years. The grazing association will pay for a grazing lease on the land as well as perform maintenance activities.

9. Literature Cited

- Alt, K.L., M.R. Frisina, and F.J. King. 1992. Coordinated management of elk and cattle, a perspective – Wall Creek Wildlife Management Area. *Rangelands* 14:12-15
- Harrington, B. 2011. Wall Creek Wildlife Management Area Vegetation Monitoring. Federal Aid in Wildlife Restoration Project W-154-R. 50pp.
- Shamhart, J., F. King, and K. Proffitt. 2012. Effects of a rest-rotation grazing system on wintering elk distributions at Wall Creek, Montana. *Rangeland Ecology and Management*. 65: 129-136.

PART II. ENVIRONMENTAL REVIEW CHECKLIST

Evaluation of the impacts of the Proposed Action including secondary and cumulative impacts on the Physical and Human Environment.

A. PHYSICAL ENVIRONMENT

1) Land resources. Will the proposed action result in:

- a. **Soil instability or changes in geologic substructure?
- b. Disruption, displacement, erosion, compaction, moisture loss, or over-covering of soil, which would reduce productivity or fertility?
- c. **Destruction, covering, or modification of any unique geologic or physical features?
- d. Changes in siltation, deposition or erosion patterns that may modify the channel of a river or stream or the bed or shore of a lake?
- e. Exposure of people or property to earthquakes, landslides, ground failure, or other natural hazard?

The proposed action would have no additional effect to soil conditions as cattle have used and grazed this area in a controlled manner for more than 30 years through this rest-rotation system, and conditions are consistently monitored on the WMA.

2) Air. Will the proposed action result in:

- a. **Emission of air pollutants or deterioration of ambient air quality? (Also see 13 (c).)
- b. Creation of objectionable odors?
- c. Alteration of air movement, moisture, or temperature patterns or any change in climate, either locally or regionally?
- d. Adverse effects on vegetation, including crops, due to increased emissions of pollutants?
- e. ***For P-R/D-J projects, will the project result in any discharge, which will conflict with federal or state air quality regulations? (Also see 2a.)
- f. Other:

The proposed action would not change the ambient air quality at the WMA.

3) Water. Will the proposed action result in:

- a. Discharge into surface water or any alteration of surface water quality including but not limited to temperature, dissolved oxygen or turbidity?
- b. Changes in drainage patterns or the rate and amount of surface runoff?
- c. Alteration of the course or magnitude of floodwater or other flows?
- d. Changes in the amount of surface water in any water body or creation of a new water body?
- e. Exposure of people or property to water related hazards such as flooding?
- f. Changes in the quality of groundwater?
- g. Changes in the quantity of groundwater?
- h. Increase in risk of contamination of surface or groundwater?
- i. Effects on any existing water right or reservation?
- j. Effects on other water users as a result of any alteration in surface or groundwater quality?
- k. Effects on other users as a result of any alteration in surface or groundwater quantity?
- l. ****For P-R/D-J, will the project affect a designated floodplain? (Also see 3c.)

- m. ***For P-R/D-J, will the project result in any discharge that will affect federal or state water quality regulations? (Also see 3a.)

- n. Other:

Effects to the local streams and riparian areas (Bobcat Creek, English George, Hyde Creek, Ruby Creek) will be monitored but are expected to be the same as or of lower impact than what has occurred historically.

4) Vegetation. Will the proposed action result in:

- a. Changes in the diversity, productivity, or abundance of plant species (including trees, shrubs, grass, crops, and aquatic plants)?
- b. Alteration of a plant community?
- c. Adverse effects on any unique, rare, threatened, or endangered species?
- d. Reduction in acreage or productivity of any agricultural land?
- e. Establishment or spread of noxious weeds?
- f. ***For P-R/D-J, will the project affect wetlands, or prime and unique farmland?
- g. Other:

Wall Creek WMA has been the subject of vegetation transects, exclosure studies, and other research. Current results indicate the vegetation community is "stable if not improving." Under the proposed action, the vegetation community should continue this trend. There is no soil conversion or change in overall amount of land being grazed. FWP would continue to control weeds.

5) Fish and Wildlife. Will the proposed action result in:

- a. Deterioration of critical fish or wildlife habitat?
- b. Changes in the diversity or abundance of game animals or bird species?
- c. Changes in the diversity or abundance of nongame species?
- d. Introduction of new species into an area?
- e. Creation of a barrier to the migration or movement of animals?
- f. Adverse effects on any unique, rare, threatened, or endangered species?
- g. Increase in conditions that stress wildlife populations or limit abundance (including harassment, legal or illegal harvest or other human activity)?
- h. ***For P-R/D-J, will the project be performed in any area in which T&E species are present, and will the project affect any T&E species or their habitat? (Also see 5f.)
- i. ***For P-R/D-J, will the project introduce or export any species not presently or historically occurring in the receiving location? (Also see 5d.)
- j. Other:

There could be grizzly bears present, but likely in very small numbers, and this project should not affect their habitat.

6) Human Environment. Will the proposed action result in:

- a. Increases in existing noise levels?
- b. Exposure of people to serve or nuisance noise levels?
- c. Creation of electrostatic or electromagnetic effects that could be detrimental to human health or property?
- d. Interference with radio or television reception and operation?
- e. Other:

Movement of cattle involves some noise from the animals themselves. This occurs during daylight hours and is generally limited to the day of movement. None of these noises should result in any interference.

7) Land Use. Will the proposed action result in:

- a. Alteration of or interference with the productivity or profitability of the existing land use of an area?
- b. Conflict with a designated natural area or area of unusual scientific or educational importance?
- c. Conflict with any existing land use whose presence would constrain or potentially prohibit the proposed action?
- d. Adverse effects on or relocation of residences?
- e. Other:

The proposed action allows a grazing association to lease grazing on the WM which will benefit the association while providing for the needs of elk and other wildlife over a larger landscape beyond the WMA.

8) Risk/Health Hazards. Will the proposed action result in:

- a. Risk of an explosion or release of hazardous substances (including, but not limited to oil, pesticides, chemicals, or radiation) in the event of an accident or other forms of disruption?
- b. Affect an existing emergency response or emergency evacuation plan, or create a need for a new plan?
- c. Creation of any human health hazard or potential hazard?
- d. ***For P-R/D-J, will any chemical toxicants be used? (Also see 8a)
- e. Other:

The proposed action would not increase risks or health hazards at the WMA.

9) Community Impact. Will the proposed action result in:

- a. Alteration of the location, distribution, density, or growth rate of the human population of an area?
- b. Alteration of the social structure of a community?
- c. Alteration of the level or distribution of employment or community or personal income?
- d. Changes in industrial or commercial activity?
- e. Increased traffic hazards or effects on existing transportation facilities or patterns of movement of people and goods?
- f. Other:

The proposed action allows a grazing association to lease grazing on the WMA which will benefit the association and the local economy. There will be no increased hazard related to transportation or movement of people and goods as timing of all activities will remain the same.

10) Public Services/Taxes/Utilities. Will the proposed action result in:

- a. An effect upon or result in a need for new or altered governmental services in any of the following areas: fire or police protection, schools, parks/recreational facilities, roads or other public maintenance, water supply, sewer or septic systems, solid waste disposal, health, or other governmental services? If any, specify:
- b. An effect upon the local or state tax base and revenues?
- c. A need for new facilities or substantial alterations of any of the following utilities: electric power, natural gas, other fuel supply or distribution systems, or communications?
- d. Increased use of any energy source?
- e. **Define projected revenue sources
- f. **Define projected maintenance costs
- g. Other:

The proposed action would have no impact to public services to the WMA. The grazing lease requires the lessee to be responsible for maintaining fences and other responsibilities which will reduce the need for WMA maintenance staff to conduct these tasks. Under the **previous lease structure**, WMA staff spent approximately \$6,000 per year:

- \$4,500 in labor, mileage, and travel for putting up and taking down electric fences, erecting stream crossing fence on Ruby Creek, and numerous spall repairs.
- \$500 in supplies and materials for fence repairs.
- \$1,000 in labor, mileage, and travel pay for control of houndstongue in the upper Dry Hollow pasture as a result of grazing impacts around the water tank.

Under the **proposed lease structure**, WMA staff would expect to spend about \$1,500 per year

- \$1,000 in labor, mileage, and travel pay for control of houndstongue in the upper Dry Hollow pasture as a result of grazing impacts around the water tank.
- \$500 in supplies and materials for fence repairs.

11) Aesthetics/Recreation. Will the proposed action result in:

- a. Alteration of any scenic vista or creation of an aesthetically offensive site or effect that is open to public view?
- b. Alteration of the aesthetic character of a community or neighborhood?
- c. **Alteration of the quality or quantity of recreational/tourism opportunities and settings? (Attach Tourism Report.)
- d. ***For P-R/D-J, will any designated or proposed wild or scenic rivers, trails or wilderness areas be impacted? (Also see 11a, 11c.)
- e. Other:

Some groups feel cattle presence reduces the wild and scenic value of public lands. However, the WMA is, and has been, grazed for 30 years. The proposed action does not therefore offer a landscape change. Grazing does not generally coincide with rifle hunting, but cattle may be present during archery season, upland bird hunting, and antler hunting in spring. This proposal does not alter the aesthetics and recreational opportunities from what they have been.

12) Cultural/Historical resources. Will the proposed action result in:

- a. Destruction or alteration of any site, structure or object of prehistoric historic, or paleontological importance?
- b. Physical change that would affect unique cultural values?
- c. Effects on existing religious or sacred uses of a site or area?
- d. ****For P-R/D-J, will the project affect historic or cultural resources? Attach SHPO letter of clearance. (Also see 12.a.)
- e. Other:

There will be no physical changes to WCWMA under this proposal.

13) Significance Criteria. Will the proposed action, considered as a whole:

- a. Have impacts that are individually limited, but cumulatively considerable? (A project or program may result in impacts on two or more separate resources that create a significant effect when considered together or in total).
- b. Involve potential risks or adverse effects, which are uncertain but extremely hazardous if they were to occur?
- c. Potentially conflict with the substantive requirements of any local, state, or federal law, regulation, standard or formal plan?

- d. Establish a precedent or likelihood that future actions with significant environmental impacts will be proposed?
- e. Generate substantial debate or controversy about the nature of the impacts that would be created?
- f. ***For P-R/D-J, is the project expected to have organized opposition or generate substantial public controversy? (Also see 13e.)
- g. ****For P-R/D-J, list any federal or state permits required.

The action should neither have cumulative impacts nor hazardous risks. The action should neither conflict with any laws nor establish any new precedents as it is not a new action. It is possible some controversy could result as grazing on public lands has recently been a topic of focus by some special interest groups.

2. Evaluation and listing of mitigation, stipulation, or other control measures enforceable by the agency or another government agency:

The terms of the lease agreement will provide the control measure for the lessee and FWP.

PART III. NARRATIVE EVALUATION AND COMMENT

The grazing plan on WCWMA is a long-term system that has worked very well to meet FWP goals for wildlife and habitat while managing livestock presence in the area. This proposal allows us to maintain existing agency and landowner partnerships and the structure of a useful and beneficial rest-rotation grazing system. The addition of the lease payment from the WCGA to FWP will bring WCWMA in-line with other Montana game ranges, standardizing the expectations of lessees on game ranges across the state.

PART IV. PUBLIC PARTICIPATION

1. Describe the level of public involvement for this project if any, and, given the complexity and the seriousness of the environmental issues associated with the proposed action, is the level of public involvement appropriate under the circumstances?

The public will be notified in the following manners to comment on this current EA, the proposed action and alternatives:

- Two public notices in the Bozeman Chronicle and the Helena Independent Record.
- Public notice on the Fish, Wildlife & Parks web page: <http://fwp.mt.gov>.

Copies of this environmental assessment will be distributed to interested parties to ensure their knowledge of the proposed project.

This level of public notice and participation is appropriate for a project of this limited scope.

2. Duration of comment period, if any.

The public comment period will extend for 30 days following the publication of the legal notice in area newspapers. Written comments will be accepted until March 18 and can be mailed to the address below (Part V, 2)

PART V. EA PREPARATION

**1. Based on the significance criteria evaluated in this EA, is an EIS required? (YES/NO)? NO
If an EIS is not required, explain why the EA is the appropriate level of analysis for this proposed action.**

The proposed action will not have significant adverse or cumulative impacts on the local environment as it mainly continues an arrangement that has proven beneficial for wildlife habitat and agriculture for the past 30 years.

2. Person responsible for preparing the EA:

Julie A. Cunningham
Bozeman Area Biologist
1400 S. 19th Avenue
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3. List of agencies consulted during preparation of the EA: BLM, DNRC, USFS

Proposed Wall Creek Grazing Lease

Designated Area: Wall Creek WMA

Grazing Lease No. ____



**Montana Fish,
Wildlife & Parks**

THIS LEASE entered into this 1 day of May 2013 between the Montana Department of Fish, Wildlife and Parks, an agency of the State of Montana, whose main address is P.O. Box 200701, 1420 East 6th Avenue, Helena, Montana 59620-0701, hereafter referred to as the "Department" and Wall Creek Grazing Association, whose address is Cameron MT, hereafter referred to as the "Lessee".

STATEMENT OF BENEFIT TO VEGETATION & WILDLIFE: Livestock grazing on Wall Creek Wildlife management Area is regulated by a rest-rotation grazing system. This system incorporates pastures on USFS lands as well. This grazing system is designed to increase and encourage re-growth of valuable forage plants thereby increasing the palatability of forage for wintering elk. Also, this system is designed to promote and protect healthy soils and plant communities. This grazing system offers valuable forage for domestic livestock owned by local ranchers.

The Department is the owner of or has under its control, certain real property located in Madison County, more particularly described in "Appendix A" attached hereto & incorporated herein.

The Department, in consideration of the payment of rentals specified in this lease and the mutual agreements contained in this lease, leases the property described above to the Lessee named above for agricultural purposes as herein established for the period beginning May 1, 2013, and ending September 30, 2015.

The Lessee, in consideration of the lease of the property described above and mutual agreements contained in this lease, hereby agrees to pay the rentals specified in this lease.

The parties to this lease mutually agree to the following terms and conditions:

1. **GRAZING SEASON AND CAPACITY.** The grazing season hereunder is the period beginning May 1, 2013, and ending on September 30 of the same year. A maximum of 830 Animal Unit Months (AUM's) of grazing is permitted during each yearly grazing season. Rentals will be paid on the basis of actual AUM's grazed on the leased property.

1 Cow/Calf pair = 1 AUM 1 Bull = 1.5 AUM Yearling = 0.8 AUM 1 Horse = 1.25 AUM

2. **RENTAL.** The rental will be the DNRC grazing rate, which is established each year. The lessee must meet the agreement set out Paragraph 14 for property maintenance to qualify for this lower rate. The standard rate would be the FWP grazing rate.

☒ Payment is to be in cash.

☒ Payment is to be in services to be rendered in the manner agreed upon and more fully set out in Paragraph 14.

ALL RENTALS, WHETHER CASH OR SERVICES, ARE DUE BY October 1 EACH YEAR FOR AGRICULTURAL USE CONDUCTED DURING THAT CALENDAR YEAR. FAILURE TO PAY THE AGREED UPON RENTAL OR TO PROVIDE THE SERVICES SET OUT IN PARAGRAPH 14 BY NOVEMBER 1 AUTOMATICALLY TERMINATES THIS LEASE. A NOTICE OF RENTAL DUE WILL BE SENT TO LESSEE AT THE ABOVE ADDRESS ONLY UNLESS A CHANGE OF ADDRESS HAS BEEN PROVIDED IN WRITING TO THE DEPARTMENT'S LIAISON AS IDENTIFIED IN THIS LEASE.

The Department shall have a lien upon all improvements, whether movable or not, all crops growing and livestock grazed upon the land for any rentals due the Department.

3. **RENTAL ADJUSTMENTS.** The Department reserves the right to determine the grazing capacity of the leased lands annually or from time to time as the Department in its discretion shall determine necessary and to increase or decrease the grazing capacity. If the Department determines that the grazing capacity of the leased lands should be increased or decreased, the Lessee agrees to pay an increased or decreased rental based upon the Department's determination, provided the Lessee actually grazes livestock to the level of any increased grazing capacity.

4. **LESSEE AGREES TO:**

- a. Use the lands in a manner that will not cause over-grazing, streambank damage, or other soil erosion, according to the usual and customary course of good grazing practices.
- b. Use the premises only for grazing purposes. Any other use of the premises by Lessee without prior written approval of the Department shall subject this lease to immediate cancellation.
- c. Provide the Department with the number of AUMs used by the Lessee on the premises for that year.
- d. Take all reasonable precautions to prevent fires and take such actions as are within the means of the Lessee to suppress fires.
- e. Use the land in such a manner as to control growth and spread of noxious weeds and to promote conservation of the leased lands.
- f. Not commit waste or damage to leased lands or allow any to be done.
- g. Comply with all applicable laws, rules, and regulations in effect at the date of this lease, or which may, from time to time, be adopted.
- h. Indemnify and hold harmless the Department, its officers, agents and employees against any claim of damage to person or property arising out of use of the leased lands, except for any such damage caused by the negligence or willful misconduct of the Department, its officers, agents or employees.
- i. Immediately, upon termination or expiration of the term of this lease, peaceably surrender and deliver up the leased lands to the Department.
- j. Not use the leased lands or this lease agreement as collateral for credit financing, or in any way, which would encumber the title to the property herein described. Failure to comply with this provision shall automatically terminate this lease and in no way shall it be construed as to cause the Department any financial obligation or responsibility.
- k. Not disturb or remove any archaeological, historical, or other cultural features or any improvements, which may currently exist, or may be found to exist, on the premises.
- l. Remedies for Unauthorized Uses and Practices - In the event the lessee violates, by the Department's determination, the grazing plan prescribed in Exhibit "B: of this lease, the lessee agrees to pay a fee equal to 3 times the number of animals found in violation of the grazing plan. This fee will be three times the AUM rental fee assigned by this lease, or the current annual grazing rate for FWP or DNRC, as described in Rental (2) above and Special Conditions (14) below. The Department at its sole discretion, and in addition to other remedies provided for in this lease, may require this fee of the Lessee. The Lessee agrees to pay this fee no later than the termination date of this lease. If this lease is renewed with the Lessee in subsequent years, the Department at its sole discretion, may reduce the number of animals allowed to graze the land under this lease a multiple of three times the number of animals found in violation for up to two years after the year of violation.

5. **PUBLIC ACCESS.** All lands leased in this agreement shall remain open to the public for hunting, fishing and other recreational activities, subject to applicable Federal and State laws and regulations.

6. **HERBICIDES AND PESTICIDES.** Lessee agrees that any use of herbicides or pesticides on the leased lands will be in compliance with all provisions of Federal and State laws regulating such substances. Any application of such substances must be approved in advance, by the Department's liaison as identified in this lease.

7. **IMPROVEMENTS.** No improvements may be placed upon the premises without prior written approval of the Department.

8. **TERMINATION.** The Department reserves the power and authority, at its discretion, to terminate this lease prior to expiration upon 30 days written notice for violation for any of the terms of this lease by Lessee. The Department also reserves the power to cancel this lease for fraud or misrepresentations, or for concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued; for using the land for other purposes than those specifically authorized by the lease, for any unlawful or other misuse of the lands, and for any other cause which in the judgment of the Department makes the cancellation of the lease necessary in order to do justice to all parties concerned, and to protect the interest of the Department. Notice of termination shall be deemed given upon deposit in the United States mails, addressed to the Lessee at the address shown above, unless a change of address has been provided in writing to the Department's liaison. The Lessee shall, upon termination of this lease, promptly and peaceably surrender possession and occupancy of the leased lands, leaving them in as good a condition as existed at the beginning of the term of this lease. Upon such termination, all rights of the Lessee in and to the leased lands shall cease and the Lessee shall not be entitled to any refunds of rentals paid. Termination of the lease does not terminate the Lessee's liability for rentals accruing prior to termination.
9. **SUBLEASING AND ASSIGNMENT.** Lessee shall not sublease or assign all or any part of the leased lands or assign this lease in whole or in part to any other person or entity. Such a sublease or assignment automatically terminates this lease.
10. **MODIFICATIONS.** This document constitutes the sole and entire agreement between the parties. No statements, promises or inducements made by either party which are not contained in this agreement are valid or binding unless evidenced in writing and signed by both parties; except that the provisions of Paragraph 3 may be implemented by written notice from the Department.
11. **SUCCESSORS IN INTEREST.** All terms, conditions and provisions of this lease shall be binding upon, inure to the benefit of, and be enforceable by and upon the successors in interest of the Department and the Lessee.
12. **VENUES AND APPLICABLE LAW.** Venue for any court action arising under this lease shall be in the First Judicial District in and for the County of Lewis and Clark, Montana and this lease shall be interpreted according to the laws of the State of Montana.
13. **DEPARTMENT LIAISON.** The Department designates Julie Cunningham, or whomever is the Department Bozeman area biologist, as liaison under this lease. Lessee will make all official contacts with the Department through the liaison.
14. **SPECIAL CONDITIONS:**
The Department has the authority to determine if a new member of the Wall Creek Grazing Association would be allowed to graze on the Wall Creek WMA. This is necessary in order to accommodate specific issues including wildlife/livestock disease concerns, having assurances a new member understands the Department's approach to grazing and concerns for grazing, and ensuring a new member is collaborative with the Department. In addition, this grazing lease is not attached to a particular operator, the Department still needs to retain the ability to decide who grazes on the WMA, whether it be an individual lease or member of a grazing association.
Payments were decided by the Wall Creek Grazing Association in 2012 to be, for the duration of this lease, the lower DNRC rate concurrent with the additional conditions outlined in Appendix C, attached.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS LEASE ON The DAY AND YEAR FIRST ABOVE WRITTEN.

Montana Fish, Wildlife & Parks

Lessee

Department Attorney
(As needed)

(GRAZLS Revised 2/2006)

BE SURE TO INCLUDE APPENDIX "A" (LEGAL DESCRIPTION OF LAND ACTUALLY LEASED-OUT) AND EXHIBIT "A" GRAZING PLAN
AS NEEDED.

Appendix B. Legal Description, Wall Creek WMA Grazing Lease

T9S – R1W

Sec. 10 except NE $\frac{1}{4}$, NE $\frac{1}{4}$

S $\frac{1}{2}$ Sec. 11

SW $\frac{1}{4}$ Sec. 12

Sec. 14 except E $\frac{1}{2}$ SE $\frac{1}{4}$

Sec. 15

E $\frac{1}{2}$ Sec. 16

E $\frac{1}{2}$ Sec. 21

Sec. 22

Sec. 23 except E $\frac{1}{2}$, NE $\frac{1}{4}$

SW $\frac{1}{4}$, SW $\frac{1}{4}$, Sec. 24

That portion of the E $\frac{1}{2}$, SE $\frac{1}{4}$. Sec. 25 lying west of the Madison River

W $\frac{1}{2}$, Sec. 25 west of the Madison River

Sec. 26

NE $\frac{1}{4}$, Sec. 27

E $\frac{1}{2}$. Sec. 35

Sec. 36 west of the Madison River

T10S – R1W

Sec. 1 except E $\frac{1}{2}$, E $\frac{1}{2}$

NE $\frac{1}{4}$, Sec. 2

Exhibit A: Grazing Plan

The Grazing Plan will be the same as established under the 2008-2012 lease, with the 2009 modification.

The spring “off” dates will be held as firm on Wall Creek WMA, meaning cattle will rotate out of the spring pasture by June 1st (within 1 or 2 days given weekends or logistic needs). Some flexibility can be allotted based upon stocking rates only in the fall pastures, as long as cattle will be off the game range before antelope season opening day.

APPENDIX C: Grazing Lessee Responsibilities

STANDARD RATE (FWP Rate)

The STANDARD RATE is based on an average of the prior year's Animal Unit rate of private leases reported by the National Agricultural Statistics Service. When the lessee pays the STANDARD RATE for grazing fees, they are responsible for:

- a) Following the grazing rotation and opening and closing gates according to the schedule agreed upon in the lease.
- b) Alerting FWP immediately of any issues that may be cause for diverging from scheduled movement dates.
- c) Maintaining and operating water systems to provide water to livestock.
- d) Check fences and gates prior to moving livestock into a pasture to ensure its effectiveness.
- e) Closing all gates in a pasture before grazing and opening ALL the interior gates to a pasture system within one week of leaving the pasture.
- f) Minor and/or short term repairs to fences to retain livestock in occupied pastures.
- g) Report to FWP needs for more permanent or substantial fence repair (e.g., post replacement).
- h) Removing all salt blocks, mineral supplements and their containers (i.e. crystalux tubs) at the end of the grazing season.

LOW RATE (DNRC Rate)

In addition to responsibilities listed under the STANDARD RATE, when the lessee receives the reduced (DNRC) rate for grazing fees, they are responsible for:

- a) Maintaining all fences associated with the defined grazing system to prevent loss of livestock and to prevent trespass livestock from neighboring properties, whether or not that pasture is currently in use by the lessee.
- b) Maintaining the fence wires in good condition including keeping the wire stretched and taunt so that they do not become wildlife entrapment hazards. Splices to the fence will be performed with twin strand (barbless) horse wire, barbed wire or approved splice connectors. Soft wire (i.e. single strand number 9 wire) will ***not*** be used for fence repair.
- c) Raising and lowering drop fences. Upon leaving a pasture, drop fences will be lowered within 2 weeks time.
- d) Identifying and replacing broken t-posts, corner posts and braces to keep the fence in good condition.
- e) Keeping trees and debris removed from the fences and repairing the damage that results from trees falling on the fence.
- f) Repairing damages caused by negligence on the part of the lessee or their agent (i.e., range rider). An example of this would be when the lessees do not lower a drop fence at the end of the season and, as a result, it is damaged by wildlife or sliding snow.

Under the LOW RATE, the WMA crew is responsible for:

- a) Assuring that all materials are provided to the lessees to allow repairs to be made.
- b) Assisting with relocation of fences (either permanent or temporary) to address functional problems with the grazing system.
- c) Assisting with fences that are too derelict to be maintained. An example of this would be for the WMA crew to help string electric fence along a section of Jack-leg fence that has fallen over from age as a "stop gap" measure until the derelict fence can be replaced.